

K-C Docket No.: 20,240

Serial No.: 10/749,761

Response to Restriction Requirement Dated: April 12, 2006

### Remarks

As per the restriction requirement mailed March 15, 2006, the Examiner has purportedly identified four (4) patentably distinct species in the present application.

Applicants respectfully **provisionally elect** Species 4 to be prosecuted by way of the present application. That is, Applicants elect claims 31-46 for prosecution in the present application.

This election is made **with traverse**. Applicants specifically reserve the right to seek patent protection for non-elected subject matter by divisional application.

According to M.P.E.P. § 808, every restriction must include the reasons why each invention is independent or distinct and the reasons why thereby would be a serious burden on the examiner if restriction is not required.

The Examiner states at page 3 that,

The species are independent or distinct because, by way of example, species 4 requires "an absorbent assembly positioned between the outer layer and the elastic inner layer wherein the absorbent assembly includes a topsheet layer and a core layer and a barrier layer" because these limitations are not required for species 1 the searches are not coextensive and additional search would of necessity be required.

Even assuming, *arguendo*, that the species are distinct; the Examiner has not provided reasons for why there would be a serious burden if restriction is not required. A conclusory statement as to the existence of an addition limitation does not satisfy the burden.

Applicants respectfully note that the claims of the species 1, 2, 3, and 4 have elements in common. For example:

1. All the species are directed to disposable garments comprising an outer layer and an elastic inner layer.
2. In all species, the elastic inner layer includes a front piece, a back piece and a crotch piece, wherein the crotch piece is attached to the front piece and the back piece and wherein the front piece and the back piece are elastic in a lateral direction, and wherein the crotch piece is elastic in a longitudinal direction.

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3. In all species, the crotch piece defines an opening located in an internal position to the elastic inner layer perimeter.
4. In all species, the elastic inner layer perimeter is bonded to the outer layer.

While claims 16, 17, and 31 include additional limitations over claim 1, the Examiner has provided no explanation as to why this presents a serious burden. It seems that any search of the prior art and examination involving species 1 claims will substantially co-extend with the search and examination of Species 2, 3, and/or 4 claims. Thus, species 1-4 may be searched and examined together without undue burden in accordance with M.P.E.P. § 808.

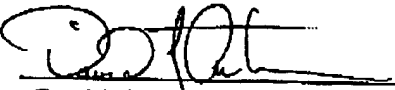
Additionally, this application has had three office actions, three responses, and an RCE prior to this restriction. All claims were adequately examined previously. It is unclear as to why continuing prosecution without restriction has now become burdensome.

The undersigned may be reached at: 920-721-3016.

Respectfully submitted,

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